Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2014 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 14-50
	)	
2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 09-182
	)	
Promoting Diversification of Ownership In the Broadcasting Services	)	MB Docket No. 07-294
	)	
Rules and Policies Concerning Attribution of Joint Sales Agreements In Local Television Markets	)	MB Docket No. 04-256

Comments of Morris Communications Company, LLC

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I. INTRODUCTION AND SUMMARY

Morris Communications Company, LLC ("Morris") hereby submits its Comments in response to the *Further Notice of Proposed Rulemaking* ("*FNPRM")* released by the Commission on April 15, 2014 in the above-captioned proceedings.[1] Morris is one of the country's strongest mid-sized, privately held media companies, with diversified holdings that include daily newspapers and radio broadcast stations. Morris currently operates co-located radio/newspaper combinations in Topeka, Kansas and Amarillo, Texas pursuant to temporary waivers.[2] Specifically, in Topeka, Morris publishes the *Topeka Capital-Journal*, and a Morris

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[1] *2014 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd. 4371 (2014) ("*2014 FNPRM*").

[2] *See In re Application of Stauffer Amarillo Radio Trust*, 11 FCC Rcd. 14865, 14868 (1996) (granting 12 month waiver of the NBCO rule to permit common ownership of the Morris newspaper/broadcast combinations in Topeka and Amarillo); *Letter from Roy J. Stewart, Chief, Mass Media Bureau to James Bayes, Wiley, Rein & Fielding*, Ref. 1800B-IB (MMB Aug. 11, 1997) (extending waiver until six months after the effective date of the Commission's action in MM Docket 96-197); *Cross-Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, 16 FCC Rcd. 17283, 17268 n.16 (2001) (further extending waiver) ("*2001 Newspaper/Broadcast Cross-Ownership NPRM*"); *2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd. 13620, 13767 (¶ 369) (2003) ("*2003 NPRM and Order*"), *aff'd in part, remanded in part*, *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005); *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd. 2010, 2056-57 (¶ 78 & n.258) (2008) (affording licensees with temporary newspaper/broadcast cross-ownership waivers until 90 days after the effective date of order to either amend their waiver/renewal request or file a request for permanent waiver) ("*2008 Order*"), *aff'd in part, remanded in part*, *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011); *2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Order, DA 12-40, MB Docket No. 06-121 (rel. Jan. 12, 2012) (extending deadline for amending waiver/renewal requests or filing a request for permanent waiver pending action on petitions for a writ of certiorari); *2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of*

subsidiary, MCC Radio, LLC, is the licensee of WIBW(AM) and WIBW-FM. In Amarillo, Morris publishes the *Amarillo Globe-News* and MMC Radio, LLC is the licensee of KGNC(AM) and KGNC-FM. Even though the newspaper and radio entities in each city are separately staffed and operated, each property reflects Morris' longstanding journalistic heritage and its commitment to providing its local communities with news and information.

As demonstrated in detail below, the record already before the Commission and the agency's own analysis confirm that it should eliminate the unnecessary and outdated newspaper/broadcast cross-ownership prohibition ("NBCO rule"), or at the very least, should promptly repeal the radio component of the rule.[3] In proceeding after proceeding, spanning nearly two decades, the Commission has received evidence demonstrating that the rule is not necessary to promote localism, competition, or viewpoint diversity. Indeed, in the radio context, the Commission has concluded since even before the rule went into existence that radio is not a large contributor to viewpoint diversity.

Moreover, the Commission itself has now determined—on *five* separate occasions in *four* separate proceedings—that maintenance of an absolute ban on newspaper/broadcast cross-

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the Telecommunications Act of 1996, Order, DA 12-1504, MB Docket No. 06-121 (rel. Sept. 17, 2012) (further extending deadline for amending waiver/renewal requests or filing requests for permanent waiver until 60 days after the release of an order in the ongoing media ownership quadrennial review that adopts a final newspaper/broadcast cross-ownership rule).

[3] Morris has long advocated complete repeal of the entire newspaper/broadcast cross-ownership rule, including both its television and radio components. *See, e.g.*, Comments of Morris Communications Company, LLC, MB Docket No. 09-182 (filed July 12, 2010); Comments of Morris Communications Company, LLC, MB Docket No. 06-121 (filed Oct. 23, 2006); Comments of Morris Communications Corporation, MB Docket No. 02-277 (filed Jan. 2, 2003); Comments of Morris Communications Corporation, MM Docket No. 01-235 (filed Dec. 3, 2001). Because the newspaper/radio component of the cross-ownership ban is the most pertinent to its current business activities, Morris will focus primarily on that aspect of the rule in these comments.

ownership cannot be justified.[4] In the *2014 FNPRM*, the Commission acknowledges and reaffirms its prior findings "that the nearly 40-year-old blanket prohibition on newspaper/broadcast cross-ownership is overly broad," and notes, further, that "the Third Circuit upheld those findings."[5] The financial challenges facing traditional media outlets, occasioned by the continued revenue and audience declines they have experienced as a result of the digital revolution, provide compelling additional justification for repealing or relaxing the newspaper/broadcast restriction or, at a minimum, its newspaper/radio component. Eliminating the prohibitive NBCO rule will offer much-needed relief to these struggling industries, helping them to continue to provide high quality news and information to the public consistent with the FCC's policy goals. Because there is no basis for retaining the newspaper/radio restriction, *a fortiori* there is no basis for considering changes that would increase its scope.

Section 202(h) of the Telecommunications Act of 1996[6] and the Administrative Procedure Act ("APA") require the Commission to re-examine the media ownership rules in light of changing facts and circumstances, and clinging to a 1975 regulatory regime well into the

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[4] *See 2014 FNPRM*, 29 FCC Rcd. at 4419 (¶ 116); *2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 26 FCC Rcd. at 17520-22, 17526 (¶¶ 89-90, 101-02) (2011); *2008 Order*, 23 FCC Rcd. at 2021-22 (¶ 19); *2003 NPRM and Order*, 18 FCC Rcd. at 13747, 13767 (¶¶ 327, 368-69); *see also 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 26 FCC Rcd. 17489, 17520-21 (¶ 89) (2011) ("*2011 NPRM*") (stating that the agency "continue[s] to believe . . . that a blanket prohibition on newspaper/broadcast combinations is overly broad and does not allow for certain cross-ownership[s] that may carry public interest benefits").

[5] *2014 FNPRM*, 29 FCC Rcd. at 4371 (¶ 116) (citing *2008 Order*, 23 FCC Rcd. at 2021-22 (¶¶ 18-19); *2003 NPRM and Order*, 18 FCC Rcd. at 13762-67 (¶¶ 361-67); *Prometheus Radio Project v. FCC*, 373 F.3d 372, 398-400 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005) ("*Prometheus I*")).

[6] Telecommunications Act of 1996 ("1996 Act"), Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12, as amended.

21st Century cannot satisfy those mandates. The current information ecosystem bears very little resemblance to the market that existed when the Commission implemented the rule in 1975. The newspaper/broadcast cross-ownership rule thus is overdue for repeal under the framework that the Commission historically has used to analyze its media ownership rules, which attempts to weigh various media sources given their apparent relative importance as sources of news and information. That framework, moreover, significantly understates the case for repeal in today's marketplace because it effectively treats news reporting and analysis as if they were fixed and quantifiable commodities rather than dynamic and iterative processes.

The digital revolution and the Commission's statutory obligations require the agency to look beyond traditional media and consider the full panoply of additional sources, including blogs, cable news channels, satellite radio, digital native news sites, and more, that provide consumers with information around-the-clock on multiple platforms. Perhaps more importantly, the Commission also must fully take into account the far more individualized, nuanced, and wide-ranging manner in which consumers access news and information in today's multimedia marketplace, as such consumer behavior necessarily bears heavily on the legitimacy of maintaining outdated rules in the name of ensuring localism or diversity. When judged against a framework that fairly takes account of these contemporary realities, it is even clearer that the newspaper/broadcast cross-ownership rule can no longer be sustained.

Regardless of the particular analytical approach chosen, however, the conclusion is inescapable that the Commission should end its disparate treatment of common owners of the legacy media. The current regulatory scheme—which allows the ownership of multiple radio stations in even the smallest markets but stringently restricts prospective newspaper/radio owners from doing the same—has no discernible public interest basis. Moreover, eliminating the NBCO rule will not negatively impact media ownership by females or minorities. Morris shares the Commission's concern regarding the problem of disproportionately low female and minority ownership of media outlets, but the antiquated and counterproductive NBCO rule cannot reasonably be seen as proximately related to this problem. The Commission should relax the stringent ownership restrictions for prospective newspaper and broadcast co-owners; doing so will provide relief for *all* owners, including minority group members and women.

After years of inaction and in the face of repeated determinations regarding the illegitimacy of an absolute ban on cross-ownership, it is well past time for the Commission to update its media ownership regulations, bringing them at long last into the 21st Century. The Commission should repeal the NBCO rule in its entirety, or at the very least, it should eliminate the restriction on common ownership of newspapers and *radio* stations and substantially relax the remaining newspaper/broadcast limitations.

II. THE EXTENSIVE RECORD COMPILED DURING THE COMMISSION'S SUCCESSIVE REVIEWS OF THE NBCO RULE SHOWS THAT ELIMINATING THE RULE IS IN THE PUBLIC INTEREST.

The *FNPRM* represents the eighth proceeding that the Commission has conducted in well more than a decade to consider the continuing validity of the 1975 newspaper/broadcast cross-ownership ban.[7] In each of these proceedings, the Commission has acknowledged the

[7] *Newspaper/Radio Cross-Ownership Waiver Policy*, Notice of Inquiry, 11 FCC Rcd. 13003 (1996) ("*Newspaper/Radio Cross-Ownership Waiver Policy NOI*"); *1998 Biennial Regulatory Review—Review of the Comm'n's Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Notice of Inquiry, 13 FCC Rcd. 11276,11280 (1998) ("*1998 Biennial Review NOI*"); *2000 Biennial Regulatory Review,* Staff Report, CC Docket No. 00-175 (2000); *Cross-Ownership of Broad. Stations and Newspapers; 2001 Newspaper/Broadcast Cross-Ownership NPRM*, 16 FCC Rcd. at 17283; *2002 Biennial Regulatory Review—Review of the Comm'n's Broad. Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996; Cross-Ownership of Broad. Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broad. Stations in Local Markets-Definition of Radio Markets*, Notice of Proposed Rulemaking, 17 FCC Rcd. 18503 (2002) ("*2002 Media Ownership NPRM*"); *2006 Quadrennial Regulatory Review—*

questionable continuing validity of the rule, yet has failed to repeal or even successfully reform it. Indeed, even when the Commission initially adopted the rule in 1975, it relied on what the agency itself recognized was a "mere hoped for gain in diversity."[8]

Eighteen years ago in 1996, the Commission stated that it would "commence an appropriate proceeding to obtain a fully informed record in this area" and pledged, moreover, "to complete that proceeding expeditiously."[9] At the time, then-Chairman Reed Hundt emphasized his concern that "there is reason to believe that . . . the newspaper-broadcast cross-ownership rule[] is right now impairing the future prospects of an important national source of education and information: the newspaper industry."[10] Although the agency subsequently initiated only a review of its then-existing newspaper/radio waiver policy, this action constituted at least a step in the right direction.[11] Again in 1998, in the course of its first periodic review conducted pursuant to Section 202(h), the Commission indicated that it "anticipate[d] taking action in [the newspaper/radio waiver] proceeding[] during 1998."[12]

Review of the Comm'n's Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996; 2002 Biennial Regulatory Review—Review of the Comm'n's Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996; Cross-Ownership of Broad. Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broad. Stations in Local Markets; Definition of Radio Markets, Further Notice of Proposed Rulemaking, 21 FCC Rcd. 8834 (2006); *2011 NPRM*, 26 FCC Rcd. at 17489; *2014 FNPRM*, 29 FCC Rcd. at 4371. The report prepared by Steven Waldman and the Working Group on Information Needs of Communities also touched on issues related to the newspaper/broadcast cross-ownership rule. *See The Information Needs of Communities: The Changing Media Landscape in a Broadband Age* (June 2011), *available at* http://www.fcc.gov/info-needs-communities#download ("*Future of Media Report*").

[8] *Multiple Ownership of Standard, FM & Television Broad. Stations*, 50 FCC 2d 1046, 1074, 1078-81 (1975) ("*1975 Multiple Ownership Report*") (subsequent history omitted).

[9] *Capital Cities/ABC, Inc.*, 11 FCC Rcd. 5841, 5888 (1996).

[10] *Id.* at 5906.

[11] *Newspaper/Radio Cross-Ownership Waiver Policy NOI*, 11 FCC Rcd. at 13003.

[12] *1998 Biennial Review NOI*, 13 FCC Rcd. at 11280.

After two more years passed, and after Congress set a specific deadline, the agency in its *1998 Biennial Review Report* punted yet again, pledging to "initiate a rulemaking proceeding to consider tailoring the rule accordingly" because "there may be circumstances in which the rule may not be necessary to achieve its intended public interest" objectives.[13] The agency waited well over a year to initiate that proceeding, in which it sought comment on a range of options ranging from retention of an absolute ban to outright repeal.[14] Instead of resolving that proceeding, the FCC decided to roll it into its next periodic review under Section 202(h), launched in September of 2002.[15] In that proceeding, the Commission finally determined that it could no longer justify the absolute ban on newspaper/broadcast cross-ownership and that, instead, relaxation of the ban would promote the FCC's public interest goals.[16] The Commission therefore adopted a new set of "cross-media limits" to replace both its newspaper/broadcast and radio/television cross-ownership rules. Acting on petitions for review of the *2003 Order*, the Third Circuit remanded the specific limits the agency had adopted based on concerns regarding the so-called "Diversity Index" developed by the Commission, but expressly agreed with the Commission that an absolute ban was not necessary to protect or promote any of the agency's

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[13] *1998 Biennial Review Report*, 15 FCC Rcd. 11058 (2000), *vacated on other grounds*, *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1048, *reh'g granted in part*, 293 F.3d 537 (D.C. Cir. 2002).

[14] *2001 Newspaper/Broadcast Cross-Ownership NPRM*, 16 FCC Rcd. at 17283.

[15] *2002 Media Ownership NPRM*, 17 FCC Rcd. at 18503.

[16] *2003 NPRM and Order*, 18 FCC Rcd. at 13747 (¶ 327); *see id.* at 13713, 13749 (¶¶ 243, 332) (concluding that advertisers do not view radio stations, newspapers, and television stations as substitutes and that elimination of the ban therefore could not "adversely affect competition in any product market"); *id.* at 13753 (¶ 342) (finding that the rule was "not necessary to promote broadcasters' provision of local news and information" and that the ban "actually works to inhibit such programming"); *id.* at 13760 (¶ 355) (concluding that "a blanket prohibition on the common ownership of broadcast stations and daily newspapers . . . can no longer be justified as necessary to achieve and protect diversity").

public interest goals.[17] The Court applauded the Commission's "recogni[tion] that ownership limits impede speech opportunities for both broadcasters and newspaper[]" publishers, and urged the Commission to craft any "new limits 'as narrowly as possible.'"[18]

On remand, the Commission again acknowledged that revision of the NBCO restriction was appropriate. Here again, the agency modestly revised rather than eliminated the rule, but recognized that the longstanding ban on newspaper/broadcast cross-ownership was inimical to the Commission's localism goal and unnecessary to protect viewpoint diversity or competition.[19] Although the Third Circuit ultimately remanded the Commission's decision in the *2008 Order* regarding the NBCO rule, the remand was not based on any substantive disagreement with the Commission's bottom-line conclusion that the rule was ripe for relaxation; instead, the court found that the agency had failed to comply with the APA's notice and comment requirements as to the specific standards adopted in 2008.[20] The Commission has since reiterated its previous findings that the NBCO rule could not be justified in its current form in both the Notice of Proposed Rulemaking initiating the 2010 Quadrennial Review and in the *FNPRM* rolling the

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[17] *Prometheus I*, 373 F.3d at 398-402.

[18] *Id.* at 402.

[19] *2008 Order*, 23 FCC Rcd. at 2022 (¶ 19), 2032-23 (¶ 39) (finding record evidence "that newspaper/broadcast combinations can create synergies that result in more news coverage for consumers," reiterating its 2003 conclusion "that efficiencies from the common ownership of two media outlets may increase the amount of diverse, competitive news and local information available to the public," and stating that it "continue[d] to find evidence" that permitting some cross-ownership "can preserve the viability of newspapers without threatening diversity" and "can improve or increase the news offered by the broadcaster and the newspaper"); *id.* at 2032-33 & n.131 (¶ 39) (stating that the agency "continue[s] to support [the] conclusion" that "newspaper/broadcast combinations cannot adversely affect competition in any relevant product market").

[20] *Prometheus Radio Project v. FCC*, 652 F.3d 431, 449-54 (2d Cir. 2011), *reh'g denied*, Order (3d Cir. Sept. 6, 2011), *cert. denied*, 144 S. Ct. 63, 64, 73 (2012) ("*Prometheus II*").

2010 proceeding into the instant 2014 Quadrennial Review.[21] With respect to radio in particular, the Commission has confirmed, time and again, that it does not believe that radio stations serve as significant sources of local news or contribute greatly to the diverse mix of viewpoints available in local media markets.[22]

In these successive proceedings, the agency has amassed an overwhelming record in favor of repeal—consisting of hundreds of thousands of comments from broadcasters, newspaper publishers, advocacy groups, and the public, as well as abundant empirical and anecdotal evidence. Based on that record, and consistent with its previous findings, the Commission should, at the very least, eliminate the restriction on newspaper/*radio* cross-ownership because there are simply no public interest justifications to maintain it. For well over a decade, Morris and others have supplied the Commission with compelling evidence that the newspaper/radio restriction does not promote the Commission's localism, competition, or viewpoint diversity goals.[23] The radio component of the NBCO rule actually harms the Commission's localism goal,

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[21] *See, e.g.*, *2014 FNPRM*, 29 FCC Rcd. at 4419, 4422, 4424, 4430, 4432–34 (¶¶ 116, 123, 128, 135, 139, 141); *see also id.* at 65 (¶ 145), 66-67 (¶ 147); *2011 NPRM*, 26 FCC Rcd. at 17520-21, 17525 (¶¶ 89, 98).

[22] *See, e.g.*, *2011 NPRM*, 26 FCC Rcd. at 17529 (¶ 112) ("We tentatively conclude that radio stations are not the primary outlets that contribute to local viewpoint diversity."); *2008 Order*, 23 FCC Rcd. at 2057 (n.259); ("[T]he record reflects that radio is a significantly less important source of news and information than newspapers or television"); *2003 NPRM and Order*, 18 FCC Rcd. at 13800 (¶ 459) ("[B]roadcast radio generally has less of an impact on local diversity than broadcast television . . . .").

[23] *See, e.g.*, Comments of Morris Communications Company, LLC, MB Docket No. 09-182, 07-294 (filed July 22, 2013) ("*Morris MMTC Comments*"); Reply Comments of Morris Communications Company, LLC, MB Docket Nos. 09-182, 07-294 (filed Jan. 4, 2013) ("*Morris Ownership Report Reply Comments*"); Reply Comments of Morris Communications Company, LLC, MB Docket Nos. 09-182, 07-294 (filed Apr. 17, 2012); Comments of Morris Communications Company, LLC, MB Docket Nos. 09-182, 07-294 (filed Mar. 5, 2012) ("*Morris NPRM Comments*"); Comments of Morris Communications Company, LLC, MB Docket No. 09-182 (filed July 12, 2010) ("*Morris NOI Comments*"); Comments of Morris Communications Company, LLC, MB Docket Nos. 06-121, 02-277, MM Docket Nos. 01-235, 01-317, 00-244 (filed Oct. 23, 2006); Comments of Morris Communications Company, LLC,

and is not necessary to promote either competition or viewpoint diversity. The time for Commission action on at least that aspect of the rule is *now*, and the Commission should move forward promptly to repeal it.

A. At a Minimum, the Commission Must Repeal the Newspaper/Radio Cross-Ownership Restriction.

1. *The Newspaper/Radio Cross-Ownership Ban Is Not Necessary To Further Any of the Commission's Public Interest Goals.*

Morris applauds and strongly supports the Commission's suggestion in the *FNPRM* that it may lift the newspaper/radio cross-ownership restriction, and urges the agency finally to do so. There are no public interest justifications for maintaining the restriction, and in fact, eliminating the restriction will yield substantial public interest benefits.

The extensive record already before the agency, which Morris is confident will be bolstered in this round of comments, shows that eliminating the newspaper/radio cross-ownership rule will promote—not harm—the Commission's localism goal, as the agency correctly recognizes. As noted above, the Commission has long recognized that the cross-ownership restriction does not promote localism.[24] In 2003, the Commission concluded that "the rule is not necessary to promote localism (and may in fact harm localism),"[25] a finding that the Third Circuit affirmed.[26] The Commission in the *2014 FNPRM now* properly reaffirms this

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MB Docket No. 02-277, MM Docket Nos. 01-235, 01-317, 00-244 (filed Jan. 2, 2003) ("*Morris 2002 NPRM Comments*"); Comments of Morris Communications Company, LLC, MM Docket Nos. 01-235, 96-197 (filed Dec. 3, 2001); Reply Comments of Morris Communications Corporation and Stauffer Communications, Inc., MM Docket No. 96-197 (filed Mar. 21, 1997).

[24] *2014 FNPRM*, 29 FCC Rcd. at 4435–36 (¶ 145); *2008* Order, 23 FCC Rcd. at 2032–33 (¶ 39); *2003 NPRM and* Order, 18 FCC Rcd. at 13753–54 (¶ 342).

[25] *2003 NPRM and Order*, 18 FCC Rcd. at 13748 (¶ 330).

[26] *Prometheus I*, 373 F.3d at 398-99.

finding, reiterating that "newspaper/broadcast cross-ownership may enable commonly owned properties to produce and disseminate more and sometimes better local news."[27]

Indeed, there is ample evidence in the record—including the experiences of grandfathered and other commonly-owned newspaper/broadcast combinations—that cross-ownership promotes localism. Morris itself has described on many occasions its exemplary provision of local news in Amarillo and Topeka, where it has cross-owned properties.[28] In addition, Cox Media Group ("Cox"), for example, has provided evidence of the enhanced localism in Atlanta and Dayton where it has cross-owned properties.[29] Bonneville International Corporation and the Scranton Times similarly demonstrated that their cross-owned properties created major benefits: the ability for the "combined outlets [to] work together cooperatively to gather local news and/or disseminate it more broadly across multiple platforms," and the ability to "shore up the economic health of the enterprise generally and thereby help to stem further erosion in local newsgathering resources."[30] The Newspaper Association of America ("NAA") provided evidence of the benefits created by a number of other combinations as well:

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[27] *2014 FNPRM*, 29 FCC Rcd. at 4430, 4435–36 (¶¶ 135, 145).

[28] *See, e.g.*, *Morris 2002 NPRM Comments* at 5–7 ("[Morris's] combinations in Topeka and Amarillo provide those communities with an abundance of high quality news and information."); *Morris NOI Comments* at 3 ("As evidenced by Morris' combinations in Topeka and Amarillo, newspaper/radio combinations continue to serve the public interest by giving radio outlets the resources and incentives to increase their commitment to community-oriented programming, often through the adoption or continuation of an all news or informational format."); *see also infra* Section II.A.2.

[29] *See, e.g.,* Comments of Cox Media Group, MB Docket No. 09-182 (filed Mar. 5, 2012) ("*Cox NPRM Comments*").

[30] Joint Comments of Bonneville International Corporation and the Scranton Times, L.P., MB Docket Nos. 09-182, 07-294, 15–16 & n.49 (filed Mar. 5, 2012) ("*Bonneville/Scranton Times NPRM Comments*") (citing formerly cross-owned properties in Washington, D.C.—*The Evening Star* and WMAL(AM) and WMAL-FM—as an example of common ownership allowing radio properties to "make [a] commitment to local news"(internal citations omitted)).

> The radio and television stations cross-owned with *The South Bend Tribune* in Indiana have won numerous Associated Press awards for best newscast, best breaking news coverage, best community impact, best investigative report, and best photojournalism. And the *Janesville Gazette* in Madison, Wisconsin is cross-owned with WCLO-AM, an all-local news, weather, and sports talk radio station in Madison; the station hosts a weekday public affairs talk show, and both the newspaper and the radio station have won several state and national awards. . . . Radio stations in Fredericksburg, Virginia, cross-owned with *The Free Lance-Star*, have won numerous awards, including from the Virginia Associated Press Broadcasters for best documentary/in-depth report and the Douglas Southall Freeman Award for Public Service Through Journalism.[31]

The elimination of the newspaper/radio cross-ownership restriction also will not harm competition. More than a decade ago, the Commission found that the NBCO rule was not necessary to promote competition because newspapers and broadcast stations do not compete in the same product market.[32] The Commission correctly reaffirms this finding in the *FNPRM*,[33] and subsequent reports continue to confirm that this is true. For example, a recent article reports that "radio managers say what's happening at the local newspaper has less impact than ever on radio."[34] Clearly, radio stations and newspapers do not compete in the same market.

Nor is there any basis to believe that the newspaper/radio cross-ownership restriction is necessary to promote viewpoint diversity. In fact, just as in the *2011 NPRM*, the Commission does not even attempt to argue in the *2014 FNRPM* that the radio component of the NBCO rule supports viewpoint diversity. The Commission relies solely on the relative weight of daily newspapers and local *television* stations in consumers' local news consumption in its attempt to

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[31] Comments of the Newspaper Association of America, MB Docket Nos. 09-182, 07-294, 14-15 (filed Mar. 5, 2012).

[32] *2003 NPRM and Order,* 18 FCC Rcd. at 13753 (¶ 341).

[33] *2014 FNPRM,* 29 FCC Rcd. at 4432–33, 4435–36 (¶¶ 139, 145).

[34] *Impact of Radio Overtaking Print Newspapers Isn't Written in Black & White*, Inside Radio, Apr. 22, 2014, at 2.

justify maintaining some restriction on newspaper/broadcast cross-ownership as necessary to promote viewpoint diversity.[35]

The Commission acknowledges that "if the rule were no longer necessary to support [the] viewpoint diversity policy, then the newspaper/radio cross-ownership restriction would be left without a public interest rationale."[36] In fact, it could not be clearer today that the rule has no plausible public interest basis, even assuming that it ever did. As the Commission itself recognized as early as 1970, radio stations are not the primary outlets that contribute to viewpoint diversity.[37] Since 1970, the Commission has reached the same conclusion time and again: radio is not a large contributor to viewpoint diversity, and it is not where most Americans get their news.[38] In addition, as further described below, the current media marketplace is

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[35] *2014 FNPRM*, 29 FCC Rcd. at 4418–19 (¶¶ 114–16). Although Morris disagrees that any restriction on cross-ownership whatsoever is needed, the Commission's failure even to assert that continuing to ban newspaper/radio combinations is necessary to protect viewpoint diversity definitively establishes that it must repeal at least the radio component of the rule.

[36] *Id.* at 65–66 (¶ 145).

[37] *Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations*, Further Notice of Proposed Rulemaking, 22 FCC 2d 339, 344 (¶ 26) (1970) (stating that radio broadcast service was "less significant" to secure diversity). As discussed in Section III, *infra*, this practice of weighting various media might have made sense in the age of three main types of media, but is antiquated in today's ever-expanding marketplace. Instead, the Commission should examine the availability of a range of sources and the existence of a variety of voices to "check" and "balance" each other when evaluating viewpoint diversity. The NBCO rule, and at a minimum its radio component, clearly should be eliminated under either analysis.

[38] *See, e.g.*, *2014 FNPRM*, 29 FCC Rcd. at 4436–37 (¶147); *2011 NPRM*, 26 FCC Rcd. at 17529 (¶ 112) ("We tentatively conclude that radio stations are not the primary outlets that contribute to local viewpoint diversity."); *Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, Second Report and Order, 50 FCC 2d 1046, 1083 (¶ 115) (1975) ("Realistically, a radio station cannot be considered the equal of either the paper or the television station in any sense, least of all in terms of being a source for news or for being the medium turned to for discussion of matters of local concern."); *see also Bonneville/Scranton Times NPRM Comments* at 6–9 (listing statements made by the FCC from 1970 to 2011 acknowledging that radio does not significantly contribute to viewpoint diversity).

inherently competitive and diverse due to the rapid changes that have occurred as part of the digital revolution, and it requires no governmental "help" to ensure consumer access to a plethora of distinct sources of news, information, analysis, and opinion.[39]

Today, it remains true that although radio as a platform continues to be important,[40] it does not weigh heavily in any quantitative analysis of Americans' consumption of news. In fact, a recent Gallup poll found that a mere 6% of Americans turn to the radio as their main source of news.[41] In 2012, only 33% of Americans got any news "yesterday" from radio,[42] a figure which is down from more than 50% in 1990.[43] These numbers led the Pew Research Center to find that "in the broader array of audio platforms news is becoming a smaller piece of the pie."[44] Further, only 9% of Americans turn to newspapers or other print publications as their main source of news.[45]

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[39] *See infra* Section III.

[40] For example, in 2013, 91% of Americans listened to the radio weekly. *See* Pew Research Journalism Project, *Weekly Radio Listenership: Percentage of Americans Age 12 or Older Who Listen to Radio Weekly* (2013), *available at* http://www.journalism.org/media-indicators/weekly-radio-listenership/ (last visited June 14, 2014).

[41] Gallup, *TV Is Americans' Main Source of News* (July 8, 2013), *available at* http://www.gallup.com/poll/163412/americans-main-source-news-aspx (last visited June 11, 2014) ("*2013 Gallup Poll*").

[42] Pew Research Journalism Project, *Where Americans Get News: Percentage of Respondents Who Got News "Yesterday" from Each Platform* (Sept. 27, 2012), *available at* http://www.journalism.org/media-indicators/where-americans-get-news/ (last visited June 14, 2014).

[43] Pew Research Center's Project for Excellence in Journalism, *The State of the News Media 2013: An Annual Report of American Journalism*, Overview (Mar. 18, 2013), *available at* http://stateofthemedia.org/2013/overview-5/ (lasted visited June 11, 2014) ("*2013 Pew Study*").

[44] *Id.*

[45] *2013 Gallup Poll*. Likewise, a recent Pew study shows that radio stations only employ 8% of the journalists who cover state government issues at local statehouses. Pew Research Center, *America's Shifting Statehouse Press: Can New Players Compensate for Lost Legacy Reporters?*, 4 (July 10, 2014), *available at* http://www.journalism.org/2014/07/10/americas-shifting-statehouse-press/ ("*Pew Statehouse Study*").

The Commission has long had ample evidence to finalize its tentative conclusion that radio stations are not primary contributors to viewpoint diversity, and the agency has even more such evidence in hand today. Any theoretical link between the newspaper/radio cross-ownership restriction and viewpoint diversity is far too tenuous to support the rule.

Further, the Commission properly recognizes that lifting the restriction may result in "incidental benefits" to viewpoint diversity, such as revitalizing local news and helping struggling newspapers reach more people.[46] The Commission should not view these consequences of adopting much-needed and long-overdue regulatory reform as mere "incidental benefits" but, rather, as serving an overarching goal of this proceeding. What is more, the revitalization of local news in markets where newspaper owners are allowed to own radio stations is not merely a "projected outcome[]," as the Commission claims.[47] Rather, it is the reality of cross-ownership. The record is brimming with examples of newspaper/radio cross-owners providing a high quantity and quality of news and other public services to their local communities, and Morris' cross-owned properties continue this tradition to this day. Additionally, lifting the cross-ownership restriction will help struggling newspapers by giving newspaper owners additional sources of revenue and stimulating investment in the print media. As other commenters have suggested, this may not necessarily save the newspaper industry, but it will add to newspaper owners' arsenal of tools permitting their adaptation to the new media environment, thus helping to sustain local newspapers as part of the media landscape.[48]

Moreover, the Commission's proposal to eliminate the television/radio cross-ownership rule necessitates the same result with respect to the newspaper/radio cross-ownership

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[46] *2014* FNPRM, 29 FCC Rcd. at 4437–38 (¶ 148).

[47] *Id.*

[48] *See, e.g., Bonneville/Scranton Times NPRM Comments* at 15–18.

restriction.[49] In proposing to eliminate the television/radio rule, the Commission states that "no studies were submitted in the 2010 Quadrennial Review record to demonstrate that this rule supports viewpoint diversity or that repeal of the rule would cause a decrease in viewpoint diversity."[50] The Commission also notes that "radio is a distant third behind newspapers and television stations in terms of being an important provider of news and information."[51] If repealing the *television*/radio cross-ownership rule does not raise appreciable viewpoint diversity concerns for the Commission, then certainly repealing the *newspaper*/radio restriction should not either. Indeed, because the Commission relies on the same viewpoint diversity rationale to support both rules—and because the evidence cited by the Commission itself shows that radio is a less dominant source of news and information than television stations and newspapers—repealing one restriction while leaving the other in place would be arbitrary and capricious.

In sum, eliminating the newspaper/radio cross-ownership restriction will yield substantial public interest benefits, including enhanced localism. There are no credible public interest justifications for maintaining the rule: the restriction does not promote localism or competition, nor is the restriction necessary to promote or protect viewpoint diversity. Because lifting the newspaper/radio cross-ownership restriction will serve the public interest, and maintaining the restriction will not, the Commission must eliminate it.[52]

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[49] *See 2014* FNPRM, 29 FCC Rcd. at 4461–71 (¶¶ 201–25).

[50] *Id.* at 95 (¶ 211).

[51] *Id.* at 96 (¶ 213).

[52] *See* 1996 Act, § 202(h).

2. *Morris' History of Public Service in the Topeka and Amarillo Markets Underscores the Public Interest Benefits of Newspaper/Radio Cross-Ownership*

Morris' cross-owned properties demonstrate the benefits that newspaper/radio cross-ownership delivers to the public. Pursuant to temporary waivers, Morris co-owns, but separately operates, both newspaper and radio properties in two markets: Topeka and Amarillo.[53] These stations have a history of providing exemplary service to their respective communities,[54] and they continue to do so. The commonly owned radio stations take advantage of Morris' deep journalistic heritage, providing a high quantity and quality of local news and information. In fact, absent their association with a newspaper company, the radio stations would likely not have the institutional and financial support to continue to invest as heavily as they have in local news. Morris' newspaper division strongly believes that its broadcast stations should boast the same caliber of newsgathering and dissemination capabilities as its daily newspapers do. When the newspaper division is allowed to commonly own a broadcast station, the broadcast station's newsroom necessarily benefits. Morris' Topeka and Amarillo stations demonstrate the substantial public interest benefits that will flow from eliminating or relaxing the NBCO rule.

a. Topeka, Kansas

Morris' stations in Topeka—WIBW(AM) and WIBW-FM—provide a unique local news service to Northeast Kansas. Morris' stations are the only radio outlets in the market for local, regional, and state news and weather coverage. In addition, Morris' Topeka stations make

[53] Morris has not fully integrated the operations of its co-owned newspaper and radio properties due to separate staffing conditions in the original temporary waivers for these combinations and the uncertainties inherent in the Commission's long series of ownership review proceedings. Morris demonstrates herein that its same-market properties have outstanding records of public service, which undoubtedly could be enhanced further if these properties were able to more fully share costs and resources.

[54] *See, e.g., Morris NPRM Comments* at 13–18; *Morris NOI Comments* at 8–13.

significant community service contributions, and the stations have been recognized for their journalistic and charitable contributions to the community.

Morris' Topeka stations have a robust news staff. The radio stations employ eight full-time news staff and five statewide part-time "stringers," all of whom cover local news and issues. This is in stark contrast to the other radio outlets in the market. The radio station with the next largest newsroom only employs one full-time news person, while another station only reads news during a morning show. Neither of these stations has any presence at local meetings. The other stations in the market have either no in-house local news or weather operation, or no news presence at all.

Morris' investment in local news does not stop at its robust radio newsroom. In fact, Morris has increased the news budget by, on average, approximately 10% each year. This year alone, the news budget for the Topeka stations increased 58%. As of June 2014, Morris airs forty-four newscasts a day between its two stations. On the other hand, Morris' radio competitors in the market air only national newscasts—if any news at all—and none present local or regional news.

With this significant investment in local coverage, the Morris stations are able to provide substantial local programming. Seventy-one percent of WIBW-FM's programming is locally produced, as is 42% of WIBW(AM)'s. In total, the Topeka stations air 8.5 hours of locally-produced programming each weekday and five hours of locally-produced programming on Saturdays. This programming covers a wide array of topics that are important to listeners, including crime; economic issues; local and regional sports; local, regional, and state government; education; agriculture; health and medical issues; and more. Morris' Topeka stations broadcast nine regularly aired local programs, including *Ag* Issues, *News Day Now*, and

Kansas Live. In addition, while the Kansas Legislature is active, Morris broadcasts *Capital Report*, a summary of each day's legislative activity. Without Morris' significant efforts in local programming, the area would be left without extensive agricultural and farm business news. Additionally, the market would lose the only radio outlet for local, regional, and state news and weather coverage, along with Morris' in-depth local sports programming.

Morris is proud of its innovative investigative reporting in Topeka. Some recent examples of its locally-produced, independent investigative news coverage include:

- *Student Loan Middlemen*—In June 2014, Morris provided a look at how firms present themselves as necessary for college students to use to make paying loans easier and quicker. The Great Lakes Higher Education Corporation and the U.S. Department of Education participated in the story.

- *Country Stampede Music Festival*—Every June, Morris provides news from the Kicker Country Stampede, an annual country music festival held in Manhattan, Kansas. Information includes safety, community impact, economic impact, traffic, weather, schedule changes, and more.

- *Boston Marathon Bombings*—In April 2014, Morris produced programming to display how social media can be a useful tool for law enforcement, but that too often, speed trumps accuracy for news agencies when covering breaking events. This story featured police departments in Riley County, Lawrence, and Topeka, as well as a University of Kansas journalism professor.

- *Downtown and North Topeka Arts District ("NOTO") Development*—In March and April 2014, Morris aired multiple stories on the brown bag concerts, First Friday Art Walk, and other events aimed at getting people downtown. As part of this downtown Topeka revitalization effort, 580 WIBW covered plans for the future of downtown, funding efforts, and the Mars store that raised money for the revitalization. Additionally, the station produced multiple stories on the economic impact of the construction and how businesses plan to get through it.

- *Social Media Emergency Expo*—In September 2013, 580 WIBW Radio spent a day using social media to provide the public with safety information from area agencies. Using Twitter and Facebook, agencies sent in their posts and the station posted them on its website with links back to their social media accounts. The goal was to distribute safety information and also connect listeners with those agencies.

- *Shawnee County Emergency Management Budget Cuts*—In August 2013, Morris conducted a critical interview regarding impending budget cuts. County commissioners were making budget cuts, including cutting the Shawnee County Emergency Management Department. Department Director Dave Sterbans appeared on 580 WIBW explaining the reasons why that cut would be detrimental to the community. The station played key points from that interview for commissioners, who then decided not to cut the department.

- *Soldiers Save Life*—Also in August 2013, Morris followed an initial breaking news story where three Kansas Army National Guard soldiers came to the rescue of a man and woman who were being attacked by a man with a knife. Morris also did follow-up as the soldiers had the chance to meet the people they saved.

- *Police Arrest Flasher*—In June 2013, people reported a man had been flashing them in a Topeka park. With the help of WIBW, officers were able to make an arrest in the case. Using a joint operation with the radio station, a sting was set up. The flasher was arrested and booked into jail.

- *Elderly Abuse*—Beginning in 2011, Morris produced a three-part series which provided in-depth coverage of how power of attorney designations—especially financial powers of attorney—can be abused, leading to decisions or actions which negatively affect the elderly. The series featured Kansas lawmakers, the Kansas Attorney General, AARP, multiple attorneys, family members of seniors, and senior Kansans. Following the airing of this series, Kansas law was changed to bring more severe consequences to those who wrongfully abuse seniors financially. This series is ongoing, and the investigation continues today.

Morris has been recognized repeatedly for its substantial contributions to providing local news and information. For twelve of the last fifteen years, one of its Topeka stations has won the coveted Station of the Year Award from the Kansas Association of Broadcasters. In that same time period, Morris has received twelve first- or second-place Best Newscast and Best Sportscast Awards. Likewise, the stations have received ten awards in the Enterprise Story of the Year or the In Depth Reporting categories. In 2013, the *News Day Now* morning show won the Air Personality of the Year Award from the Kansas Association of Broadcasters. Additionally, the National Association of Farm Broadcasters ("NAFB") gave the stations the 2010 NAFB President's Award, and the 2011 NAFB Farm Broadcaster of the Year Award. Several more examples of Morris' acclaim include:

- a 2013 award for its feature program *Women Matters*;

- the 2013 first-place award for Best In-Depth Election Coverage;
- the 2011 Kansas Association of Broadcasters Large Market Public Affairs Award (third place);
- the 2010 Kansas Association of Broadcasters Large Market Public Affairs Award (first place); and
- the 2010 Kansas Farm Bureau's Pottawatomie County Friends of Agriculture Award.

Further, Morris is deeply involved in community service in Topeka. Morris is constantly out in the community, promoting issues and causes that matter. For example, in 2013, WIBW-FM conducted a Country Cares St. Jude Radiothon, in which it spent two days raising money for kids at St. Jude Children's Research Hospital. Also in that year, the station hosted Walk for Hope to raise money for St. Jude and Relay for Life to raise money for the American Cancer Society. Other events that the station sponsored during 2013 include the Sheltered Living Golf Classic, which supported the efforts of individuals with intellectual disabilities to achieve independence and actively participate in the community; the WIBW News Now Safe Street's National Night Out Kick Off Party, which allowed residents to join together to take a stand against crime; and the Topeka Performing Arts Center's 16th Annual Grape Escape, which raised money for local arts entertainment and education. Morris has been recognized for this stellar community service as well. In 2013, for example, the station won an award for Salvation Army involvement.

b. Amarillo, Texas

Similarly, the stations in Amarillo—KGNC(AM) and KGNC-FM—provide exemplary local news and information, and are also actively engaged in community events. As is the case with the Topeka properties, the Amarillo radio stations are able to take advantage of Morris' strong journalistic traditions to provide a unique news service to the community.

There are more than twenty-five other radio stations in the Amarillo market, and of those, Morris' stations are the only ones that have local news operations. Morris employs six news staff members: three full-time and three part-time. All of these employees cover local, regional, and state news, including severe weather warnings, agriculture, and sports. And Morris' commitment to local news coverage in Amarillo is growing. The budget for news operations has grown approximately 3% each year since Morris acquired the stations.

Morris' investment in the local news operations for its Amarillo stations results in substantial local newscasts and locally-produced programming. Morris airs 25.5 hours of local news programming per week between KGNC(AM) and KGNC-FM. These locally-produced newscasts cover a wide variety of issues including local news and agri-business programming. For example, *Golden Spread Agri-Business Hour* covers all aspects of agri-business news and the issues that affect area farmers and ranchers *NewsDay Amarillo* provides local, state, and national news, local sports coverage, local weather information, local interviews with non-profit organizations to promote fundraising events, business news, and agri-business updates. Additionally, the FM station carries eighteen hours of live programming each day, while the AM station carries four hours of live programming each day.

Morris' investment in local Amarillo news has led to innovative investigative pieces. For example, the station produces monthly segments with the Mayor, as well as multi-part series on major local stories. Without this investment, Amarillo would be left without a radio station that covers local news.

Morris' Amarillo stations take great pride in serving the community in other ways as well. For example, KGNC(AM) and KGNC-FM are the primary and secondary Emergency Alert System ("EAS") stations for the Amarillo area. Additionally, the stations have devoted air time to a number of charities and organizations in the area, including the High Plains Food Bank Drive, Amarillo Chamber of Commerce, Hispanic Chamber of Commerce, St. Jude Children's Research Hospital, Coffee Memorial Blood Drive, 4-H, Future Farmers of America, and Boy Scouts of America. The Amarillo stations also sponsor a large number of community service and charitable events, including the Amarillo Job Fair, Evelyn Rivers Toy Drive, Make-A-Wish Chili Cook-Off and Car Show, St. Jude Radiothon, Family Support Services Harley Party, and United Supermarkets Charity Gold Classic. For these local activities, Morris' Amarillo stations have received awards from "America Supports You Texas," the Randall County 4-H, the local League of Women Voters, and the Randall County Sherriff's Citizens Academy.

In sum, as shown above and in Morris' previous submissions, both of Morris' existing newspaper/broadcast combinations exemplify the benefits to localism, and therefore to the public, that permitting newspaper/radio cross-ownership can produce. Morris' experience is typical of cross-owned stations, which are able to take advantage of their common ownership by entities with deep commitments to high-quality local journalism. A decision by the Commission to allow greater common ownership of newspapers and radio stations would only cause these benefits to multiply, because stations and papers could save on costly newsgathering and investigative reporting resources. Such a decision could even result in the introduction of new local newscasts on radio stations that do not currently air any local news at all, or the adoption of news or informational formats by additional radio stations. And it would allow Morris and other newspaper companies to improve the news and information available to radio consumers by operating stations in markets where they already publish a daily newspaper. Therefore, the Commission should, at a minimum, eliminate the newspaper/radio cross-ownership restriction.

3. *The Economic Challenges Facing the Newspaper and Broadcast Industries Provide Further Justification for Elimination of the NBCO Rule.*

Eliminating the NBCO rule also will provide much-needed relief to the struggling broadcast and newspaper industries, allowing them to continue to invest in critical newsroom operations. Currently, broadcast and newspaper outlets are facing severe economic pressures and increasing costs, forcing them to cut back on newsroom operations. The ownership restrictions further handicap these outlets, preventing them from using their limited resources in the most efficient ways. Although digital newsrooms are growing, consumers still need the capabilities and knowhow of robust traditional newsrooms. Eliminating the newspaper/broadcast cross-ownership restriction will allow these newsrooms to thrive. Given that, as discussed above, the rule is not necessary to promote any of the Commission's public interest goals, repeal or at least reform of the rule is necessary to avoid "unintended harms" in the form of lost opportunities for newspapers and broadcast stations to remain financially competitive in today's ever-changing media environment.[55]

Both audiences and advertising dollars are being fragmented across the new panoply of media sources. The record contains ample evidence of this trend. For example, in 2012, Morris highlighted the *Future of Media Report* that concluded that "[a]s technology offered consumers new choices, it upended traditional news industry business models, resulting in massive job losses—including roughly 13,400 newspaper newsroom positions in just the past four years."[56] Cox has submitted evidence that "newspaper circulation has declined every quarter since 2003; newspaper revenues decreased 6 percent in 2010, following a 26 percent drop in 2009;

[55] *2014 FNPRM*, 29 FCC Rcd. at 4434 (¶ 141) (seeking comment on the "extent to which" narrowing the rule "would mitigate any unintended harms").

[56] *Future of Media Report* at 5.

newspapers employ 26 percent fewer people than in 2000; and annual reporting and editorial spending by newspapers fell by $1.6 billion between 2006 and 2009."[57] The Commission itself has recognized that "[b]roadcast and newspaper consumption in traditional forms is in decline, and advertising revenues have been shrinking in recent years."[58] In the recent *FNPRM*, the Commission states that "the impact of new technologies on the media marketplace is already significant."[59] Similarly, Chairman Wheeler recently remarked that "the broadcasting industry is subject to competition—more, in fact, today than ever before," and "recognize[d] that more is coming."[60]

The Commission suggests in the *2014 FNPRM* that the hardships of the newspaper and broadcast industries were simply part of the "global financial crisis" that caused "nearly every industry [to] struggle[]."[61] Morris disagrees. The severe obstacles facing traditional news outlets are part of a long-term trend. For example, in 2013, overall revenues for newspapers fell again. Pew reports that last year, overall revenues totaled $37.6 billion, a 2.6% decrease from 2012.[62] This decrease includes a 7% decrease in total print and digital ad revenue.[63] The Interactive Advertising Bureau ("IAB") reports that newspaper ad revenue growth fell 7%

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[57] *2014 FNPRM*, 29 FCC Rcd. at 4431–32 (n.387) (citing the *Cox NPRM Comments*). Similarly, Tribune has submitted evidence that overall revenue for the television industry has fallen 46% since 2000. *Id.* at 4434 (n.394) (citing the *Tribune NPRM Comments*).

[58] *2011 NPRM*, 26 FCC Rcd. at 17491 (¶ 3).

[59] *2014 FNPRM*, 29 FCC Rcd. at 4373 (¶ 5).

[60] *Prepared Remarks of FCC Chairman Tom Wheeler at the NAB Show* (Apr. 8, 2014) ("*Wheeler NAB Show Remarks*").

[61] *2014 FNPRM*, 29 FCC Rcd. at 4372–73 (¶ 3).

[62] Pew Research Journalism Project, *Key Indicators in Media and News*, 9 (Mar. 26, 2014), *available at* http://www.journalism.org/2014/03/26/state-of-the-news-media-2014-key-indicators-in-media-and-news/ (lasted visited June 11, 2014) ("*2014 Pew Study*").

[63] *Id.*

between 2012 and 2013.[64] The overall and long-term decrease in the financial success of newspapers coincides with impressive growth in total digital ad spending, which in 2013 alone rose 15.7% to $42.6 billion.[65]

Ad revenue trends for traditional broadcast media show similarly weak performance. Although broadcast television and radio both saw ad revenue growth in 2013, it was paltry in comparison to the growth seen by the Internet. Whereas broadcast radio's ad revenues grew only 4% between 2012 and 2013, Internet ad revenues grew 17% in the same time period, reaching $42.8 billion.[66] This figure is more than two-and-a-half times the $16.7 billion spent on radio.[67] Likewise, the small growth of radio pales in comparison to satellite radio's growth, with Sirius XM growing its revenue by 11.7% from 2012 to 2013.[68]

The numbers show a clear trend: the Internet's advertising revenue is far outpacing that of the struggling traditional media. The Internet and cable are the only forms of media that have had a positive compound annual growth rate between 2005 and 2013, with the Internet growing 16.6% during that time.[69] Other forms of media have fallen drastically in the same time period.[70]

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[64] IAB/PwC, *Digital Advertising Revenue Report Webinar*, 9 (Apr. 2014), *available at* http://www.iab.net/research/industry_data_and_landscape/adrevenuereport ("*IAB/PwC Report Webinar*").

[65] *2014 Pew Study* at 11.

[66] *IAB/PwC Report Webinar* at 9.

[67] *Id.*

[68] *2014 Pew Study* at 12.

[69] IAB/PwC, *Digital Advertising Revenue Report: 2013 Full Year Results*, 20 (Apr. 2014), *available at* http://www.iab.net/research/industry_data_and_landscape/adrevenuereport ("*IAB/PwC Report*"). In 2014, Internet advertising revenues hit an all-time first quarter high, marking a 19% year-over-year increase from 2013. IAB, *At $11.6 Billion in Q1 2014, Internet Advertising Revenues Hits All-Time First Quarter High* (June 12, 2014), *available at*

Similarly, traditional broadcast media audiences are fragmenting and competition in these areas is growing. For example, even though radio has traditionally fared better than newspaper and television in the changing media environment, the audio space is also seeing intensified competition, with brands like Pandora, iTunes Radio, and Rhapsody enjoying significant awareness.[71] Seventy percent of Americans are aware of Pandora, 47% are aware of iTunes Radio, and 40% are aware of Rhapsody.[72] Pew reports that "online listening is where the growth is"[73] and a recent Edison Research study confirms this. In fact, of the 53% of people age 12 and older who listen to Internet radio, 39% listen to personalized online radio and 18% listen to on-demand music.[74] That study also shows that compared to 2012, 67% of people listen to Internet radio more during 2013, while only 23% of people listen to traditional, over-the-air radio more in the same time period.[75] And audio podcasting is also on the rise, with 30% of people having listened to a podcast in 2014, which is up from 27% in 2013.[76]

This continued fall in revenues and audience fragmentation have caused traditional media outlets to make cutbacks in their newsrooms. As Morris has shown in the past, annual spending

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http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-061214.

[70] *IAB/PwC Report*.

[71] *Edison Research and Triton Digital, The Infinite Dial 2014,* 16 (2014), *available at* http://www.edisonresearch.com/home/archives/2014/03/the-infinite-dial-2014.php#.U5yZO9fD_IU ("*The Infinite Dial 2014*").

[72] *Id.*

[73] *2014 Pew Study* at 5.

[74] *Edison Research and the Streaming Audio Task Force*, *The New Mainstream*, 4 (July 2013), *available at* http://www.edisonresearch.com/wp-content/uploads/2013/09/The-New-Mainstream-2013-from-Edison-Research.pptx.pdf. The study includes three categories of listening in its definition of "Internet radio:" (1) streaming live AM/FM radio stations; (2) personalized radio; and (3) on-demand music. *Id.* at 3.

[75] *Id.* at 11.

[76] *2014 Pew Study* at 41.

on reporting and editing capacity for newspapers fell by more than 25% from 2006 to 2009, and the number of full-time journalists at daily papers fell from 56,900 in 1989 to 41,600 in 2010.[77] This trend continues. During 2012, full-time professional newsroom employment at newspapers fell another 6.4%.[78] That brings the number of journalists at daily papers down again from the 1989 peak to 38,000.[79]

Although digital newsrooms are growing,[80] there are still "gaps in coverage that even the fast-growing digital world has yet to fill."[81] For example, Pew reports that newspapers employ more journalists to cover state government actions at local statehouses than any other form of media; newspapers also employ the most full-time statehouse journalists.[82] Of the 1,592 statehouse journalists, newspapers employ the largest percentage of the total (38%) and the full-time group (43%).[83] Unfortunately, the total number of these statehouse reporting jobs has been steadily dropping since 1998, with the most severe drop occurring between 2003 and 2009, when newspapers were making large reductions in overall staffing.[84] In total, since 2003, 163 statehouse reporting jobs have been lost.[85] Even though nontraditional media have gained more of a presence in recent years at statehouses, they are not filling the void left by newspapers.

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[77] *Future of Media Report* at 34.

[78] *2014 Pew Study* at 13.

[79] *Id.* at 14.

[80] *See* Pew Research Journalism Project, *The Growth in Digital Reporting: What It Means for Journalism and News Consumers* (Mar. 26, 2014), *available at* http://www.journalism.org/2014/03/26/the-growth-in-digital-reporting/ (lasted visited June 11, 2014) (reporting that digital news organizations are growing their staffs, with Vice employing 1,100 staff and Huffington Post employing 575).

[81] *Future of Media Report* at 5.

[82] *Pew Statehouse Study* at 4.

[83] *Id.* at 4

[84] *Id.*

[85] *Id.* at 5

Currently, nontraditional media—like digital news organizations—account for 126 or 17% of the full-time statehouse journalism jobs.[86]

These figures show that the traditional media are the best situated to continue to provide the resources and knowhow necessary for local newsgathering and enterprise journalism based on their long history of and commitment to doing so.[87] The Commission should not require these traditional newsrooms to languish based on unsupported concerns that providing ownership flexibility might theoretically impact viewpoint diversity.[88] In fact, without robust traditional newsrooms, the media environment will lose critical voices and sources of news. Chairman Wheeler recently acknowledged the importance of the traditional media, explaining that he "strongly believe[s] that the interests of the American people are served by a vibrant broadcasting industry and include the continuation of broadcasting's historic role as a principal conveyor of news and entertainment, and especially of its invaluable role as 'first informer.'"[89]

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[86] *Id.*

[87] As NAA argues in its concurrently filed Comments, newspapers and broadcasters continue to engage in original reporting that "starts the conversation" that moves to online and other platforms. Continuing to burden traditional media with unfair and outdated regulations ultimately will not just hurt newspapers and other traditional media, it will impede the critical public conversation as well.

[88] Reed Hundt, *The FCC Should Repeal Its Newspaper-Broadcast Ownership Rule*, Washington Post, June 6, 2013, http://www.washingtonpost.com/opinions/the-fcc-should-repeal-its-newspaper-broadcast-ownership-rule/2013/06/06/7084e764-cebb-11e2-8845-d970ccb04497_story.html ("*Hundt Op-Ed"*) ("[N]ewspapers remain the most important concentration of truth-seekers and truth-tellers in the United States. Although the Internet has put newspapers at risk, most broadcasters continue to run profitable businesses. If a profitable broadcaster wants to buy a newspaper in its city—to expand the attention it can obtain from an audience or to have more impact on the way people think—the FCC should welcome this extra support for the troubled newspaper industry.").

[89] *Wheeler NAB Show Remarks.*

The Commission urges "[t]raditional news providers . . . to create innovative strategies to keep pace with the evolving media industry."[90] And Chairman Wheeler has encouraged broadcasters to seize the opportunities presented by the changing digital media marketplace by embarking on a course that includes "entrepreneurial imagination and leadership" and "think[ing] anew and ac[ting] anew."[91] As he recognized, it is the Commission's job "to facilitate such innovation," not stand in its way.[92] The Commission's outdated newspaper/broadcast cross-ownership rule, however, prevents newspaper and broadcast owners from following through on this advice by hampering their ability to efficiently face the new media environment. The rule also overlooks the stark reality that in today's media marketplace, even if one entity may originate a news "story," the Internet is capable of immediately fueling a powerful discussion not just by other media outlets, but also by a potentially limitless number of individuals on social media platforms, blogs, social media, and other digital platforms, thereby ensuring that all viewpoints will be heard. Traditional news providers like Morris stand ready and willing to keep pace with the changing media industry and to provide news "inputs" to spark these discussions; we respectfully request that the Commission grant relief from cross-ownership restrictions to allow us to continue to do so.

4. *Because There Is No Basis for Retaining Any Restriction on Newspaper/Radio Cross-ownership, the Commission Should Not Consider Expanding Its Scope.*

As demonstrated above, the Commission cannot justify retaining the newspaper/radio cross-ownership restriction; accordingly, the suggestion that the Commission might *expand* its

[90] *2014* FNPRM, 29 FCC Rcd. at 4434–35 (¶ 142).

[91] *Wheeler NAB Show Remarks.*

[92] *Id.*

scope is arbitrary and unsustainable.[93] In particular, if any vestige of the newspaper/radio restriction were incorrectly retained, there would be no credible basis for changing the market definition. Unlike in television, the method for measuring radio contours has not changed.[94]

The exclusive use of Arbitron Metros would potentially expand the reach of the rule in some markets, rendering ownership combinations that are permissible under the existing rule unlawful. Because the newspaper/radio cross-ownership restriction lacks any public interest basis, any expansion of the rule would be particularly irrational. Indeed, in discussing potential changes to the market definitions used under other rules, the Commission has expressed an intention to avoid unnecessarily expanding the scope of the media ownership rules.[95]

Should the Commission nonetheless decide to maintain the newspaper/radio cross-ownership ban, Arbitron Metro lines—which are drawn based on listening patterns—could serve a valid limiting role. Where a station and a newspaper are located in different Arbitron Metro markets, common ownership necessarily cannot cause any harm and should be freely permitted. Common ownership should also continue to be allowed where a station's local service contour does not encompass a newspaper's community of publication, because in this case as well there could be no conceivable harm to localism, competition, or diversity.

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[93] *See 2014 FNPRM*, 29 FCC Rcd. at 4435 (n.413) (seeking comment on whether to utilize Arbitron Metro market definitions instead of a contour-based approach).

[94] *Morris NPRM Comments* at 21–22.

[95] *See 2014 FNPRM*, 29 FCC Rcd. at 4383–84 (¶ 28) (in discussing the local television ownership rule, tentatively declining to adopt a DMA-based approach because doing so "would unnecessarily expand the reach of the local television ownership rule in certain DMAs and thus would be overbroad"); *id.* at 4441–43 (¶¶ 159-62) (in discussing the newspaper/television cross-ownership rule, tentatively declining to adopt a DMA-based approach and instead proposing an approach that would minimize the expansion of the scope of the rule).

III. DRAMATIC CHANGES IN THE MEDIA MARKETPLACE AND THE MANNER IN WHICH AMERICANS ACCESS NEWS AND INFORMATION REQUIRE THE COMMISSION TO UPDATE ITS ANALYTICAL APPROACH AND CONFIRM THE URGENT NEED FOR AGENCY ACTION TO ELIMINATE THE NEWSPAPER/RADIO CROSS-OWNERSHIP RULE.

The media ecosystem of 2014 bears virtually no resemblance to that of 1975, when the NBCO rule was implemented. The NBCO rule—unchanged since its adoption nearly forty years ago—simply has no place in today's media environment, where "competition for viewers, readers, and consumers is fiercer than it has ever been during the history of the Communications Act" and "the marketplace increasingly offers greater diversity of voices" because barriers to entry are now "significantly lower" in broadcast media.[96] As former Chairman Hundt recently wrote, "the proliferation of Internet access and content over the past 17 years should give today's commissioners the conviction to do the right thing."[97] The Commission must act now to meet the sweeping change in the media environment with a meaningful revision of its regulations. By doing so, the Commission finally can break free from the pattern of delay, inaction, avoidance of statutory review obligations, and evasion of meaningful judicial review that has been the hallmark of the agency's periodic media ownership review proceedings.

The Commission itself has recognized the dramatic changes that are occurring. Indeed, in this very proceeding the Commission has acknowledged that "the proliferation of media

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[96] Memorandum from Majority Committee Staff for Members of the House Subcommittee on Communications and Technology (June 9, 2014), *available at https://energycommerce.house.gov/hearing/media-ownership-21st-century*. *See also Media Ownership in the 21st Century Before the SubComm. On Communications and Technology of the H. Comm. On Energy and Commerce*, 113th Cong., at 2 (2014), *available at* https://energycommerce.house.gov/hearing/media-ownership-21st-century (statement of David Bank, Managing Director, Global Media Equity Research, RBC Capital Markets) (explaining that the current "regulatory framework was created before the dynamically changing nature of the media ecosystem that has overtaken us at light speed over the past few years had developed") ("*Bank Testimony*").

[97] *Hundt Op-Ed*.

outlets since 1975 may well render the absolute ban on newspaper/broadcast cross-ownership obsolete."[98] And in other proceedings, the Commission has long recognized and often taken action based on the fact that the media environment is rapidly changing.[99] For example, in laying out its National Broadband Plan, the Commission found that "high-speed Internet is transforming the landscape of America . . . rapidly and . . . pervasively," and that new technologies are "expand[ing] our ability to communicate, inform and entertain."[100] More recently, the Commission adopted rules for its first-ever incentive auction.[101] There, the Commission's actions were, in part, premised on meeting the goal of "the changing needs of 21st Century consumers."[102] It would be arbitrary in the extreme to ask broadcasters to change in light of the 21st Century needs of consumers in one proceeding, while insisting that regulations stay exactly the same as they have been since 1975 in another proceeding. The "changing needs of 21st Century consumers"[103] necessitate a uniform reaction from the agency, one that acknowledges, as Chairman Wheeler has done in a variety of contexts, that "competition is better than regulation at stimulating innovation and protecting consumers."[104] In a world where the Commission is taking aggressive action to facilitate innovation and investment in broadband, it

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[98] *2014 FNPRM*, 29 FCC Rcd. 4424 (¶ 128).

[99] *See, e.g.*, *Schools and Libraries Universal Service Support Mechanism*, Sixth Report and Order, 25 FCC Rcd. 18762, 18763 (¶ 2) (Sept. 28, 2010) (premising action on the fact that "[t]oday, a range of new modes of communication have become routine in the lives of the American people," and noting that "[m]any of the ways we communicate today—for example, blogging—did not exist in 1997, when the Commission released its first E-rate order").

[100] *Omnibus Broadband Initiative, Connecting America: The National Broadband Plan* at 3, available at http://download.broadband.gov/plan/national-broadband-plan.pdf.

[101] *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, FCC 14-50 (June 2, 2014).

[102] *Id.* at 5 (¶ 4).

[103] *Id.*

[104] *Wheeler NAB Show Remarks*.

must provide other regulated entities with similar opportunities and flexibility to meet the continuing demands of the changing marketplace by removing outdated and artificial regulatory constraints.

Every member of the current Commission has recognized the significance of the rapid and ongoing digital revolution. Chairman Wheeler refers to this change as the "fourth great network revolution," and recently stated that "changes in technology, business models, and consumer preferences have presented us with circumstances that are radically different from those that prevailed a generation ago."[105] Commissioner Clyburn has noted that "we have come a long way in the last 75 years, and the next two or three years alone might rival our entire communications history to date."[106] She has also urged that "[w]e have to account for a rapidly changing media environment as we tackle questions of ownership, large-scale mergers, and retransmission consent."[107] Commissioner Pai recently proclaimed that "the marketplace gives Americans more choices than ever before."[108] Commissioner O'Rielly has repeatedly expressed his worry that "the FCC is desperately clinging to existing rules—[r]ules that were written prior to the digital revolution, prior to Wi-Fi, and prior to the Internet."[109] And Commissioner Rosenworcel, too, has remarked on the fast-changing media environment. She recently explained that "every aspect of our civic and commercial lives will be changed by the power of

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[105] *Prepared Remarks of FCC Chairman Tom Wheeler at Silicon Flatirons University of Colorado Law School* (Feb. 10, 2014).

[106] *Broadband Authority and the Illusion of Regulatory Certainty*, Commissioner Mignon Clyburn (June 3, 2010).

[107] *Id.*

[108] *Keynote Address of FCC Commissioner Ajit Pai at FICCI Frames 2014* (March 12, 2014).

[109] *The Video Marketplace: A Modern Viewpoint, Remarks of Commissioner Michael O'Rielly, Federal Communications Commission at the Media Institute Luncheon* (June 19, 2014) (describing that "[d]igitization and the Internet have driven a proliferation of new platforms [in the video marketplace] for consumers, especially in the last decade").

bandwidth, data, and cloud computing," and observed that being an FCC Commissioner has given her a "front-row seat at the digital revolution."[110] Indeed, Commissioner Rosenworcel stated that this rapid change—one that will cause "television [to] change more in the next five years than it has in the last five decades" —is a cause for the string of mergers recently proposed in the communications sector.[111]

Clearly, the Commission agrees that there have been transformative changes in the media marketplace since 1975. To recognize that these drastic changes require Commission action in other proceedings, but not this proceeding, would be arbitrary and capricious. Likewise, to acknowledge that cable companies are free to "respon[d] to"[112] increased competition from online video, but to deny newspapers and broadcasters a similar freedom to react, would be patently unfair. The time has come for the Commission to move beyond acknowledging that these changes in the media environment *may* warrant elimination of the absolute ban, and to determine in this proceeding that such changes *do* warrant its repeal. In fact, eliminating the NBCO rule is not just the *right thing* to do, but something that Section 202(h) of the Telecommunications Act of 1996 and the APA *require* the Commission to do.[113]

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[110] *Digital Challenges: 4 Questions with FCC Commissioner Jessica Rosenworcel*, 1776dc.com (May 6, 2014), *available at* http://1776dc.com/news/2014/05/06/digital-challenges-4-questions-with-fcc-commissioner-jessica-rosenworcel/.

[111] Kate Tummarello, *FCC Dem: Telecom Mergers the Result of Online Competition*, The Hill (July 23, 2012), *available at* http://thehill.com/policy/technology/213131-fcc-dem-telecom-mergers-the-result-of-online-competition.

[112] *Id.*

[113] 1996 Act, § 202(h). Indeed, at a recent hearing held by the House Subcommittee on Communications and Technology regarding "Media Ownership in the 21st Century," Subcommittee Chairman Walden (R-OR) noted the presence of widespread market changes and observed that the FCC "do[esn]'t get it, that the marketplace has changed dramatically" and remarked that "the statute requires [the agency] to get it." *See Media Ownership in the 21st Century Before the SubComm. On Communications and Technology of the H. Comm. On Energy and Commerce,* 113th Cong. (2014), *available at*

The traditional rationale for the NBCO restriction no longer stands in this new media environment. Historically, the Commission has justified maintaining the NBCO rule based on a belief that it somehow helped to protect and promote viewpoint diversity.[114] However, in the new media environment, this position cannot withstand scrutiny. News in today's environment is constantly-evolving, not static. Once a news story enters the media ecosystem, it can be endlessly analyzed, interpreted, and commented on. News items—like everything else today—can go "viral" in a matter of minutes or hours, spreading across communities, the entire country, and beyond, as people like, share, comment, and tweet. Media outlets are recognizing this, as evidenced by USA Today's adoption of "Social Media Tuesdays," during which reporters seek to broaden the audiences for their stories by placing them on various social media platforms around the web.[115] The goal is "to get [journalists] thinking like their readers, who increasingly get news through their Twitter feeds instead of the paper's front page or home page" and who access information "24/7 digitally" from a variety of sources.[116] Instead of relying on the filter of traditional media, "newsmakers and others with information they want to put into the public arena have become more adept at using digital technology and social media to do so on their own."[117] Because of this, it is no longer appropriate to measure viewpoint diversity in terms of the popularity or weight that the Commission perceives each medium to carry. Rather, the very availability of a large and ever-expanding variety of competing and alternative news sources that

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https://energycommerce.house.gov/hearing/media-ownership-21st-century (remarks of Rep. Walden).

[114] *2014 FNPRM*, 29 FCC Rcd. at 4418 (¶ 114).

[115] Leslie Kaufman, *USA Today Goes Viral*, The New York Times, July 13, 2014, http://www.nytimes.com/2014/07/14/business/media/usa-today-goes-viral.html?ref=todayspaper (last visited July 17, 2014).

[116] *Id.*

[117] *2013 Pew Study* at Overview.

consumers can easily access is the key factor. In today's digital world, availability is high and usage patterns are varied, and as an inevitable consequence, viewpoint diversity abounds.

The abundance of choices available to the ordinary consumer today is simply staggering. The number of people who access the Internet continues to grow. A survey conducted by the Pew Research Internet Project found that as of January 2014, 87% of American adults use the Internet.[118] This number represents a 5% increase since April 2012, and a 73% increase since 1995.[119] Sixty-one percent—or about 160 million Americans—now own smartphones.[120] What is more, 70% of digital users now access the Internet on multiple devices, including not just traditional desktop or laptop computers, but also tablets and smartphones.[121]

Consumers are also increasingly turning to online and mobile platforms to get their news. Indeed, online news consumption was the only category that grew in Pew's 2012 News Media Consumption survey.[122] "The vast majority of Americans now get news in some digital format. In 2013, 82% of Americans said they got news on a desktop or laptop and 54% said they got news on a mobile device."[123]

And online news consumers are not just reading or viewing traditional news sources. The Pew study observed that "[d]igital players have exploded onto the news scene, bringing

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[118] Pew Research Internet Project, *Internet Use Over Time*, (Sept. 2013), *available at* http://www.pewinternet.org/data-trend/internet-use/internet-use-over-time/ (last visited June 14, 2014).

[119] *Id.* (reporting that 82% of adult Americans used the Internet in April 2012 and that 14% of adult Americans used the Internet in June 1995).

[120] *The Infinite Dial 2014*, at 34.

[121] Millennial Media, *Cross-Screen: Consumer Behavior: Decoded*, 3 (2014), *available at* http://www.millennialmedia.com/mobile-intelligence/special-reports/.

[122] *2013 Pew Study* at Digital Developments.

[123] *2014 Pew Study* at 6.

technological knowhow and new money and luring top talent."[124] For example, BuzzFeed boasts a news staff of 170 people, including Pulitzer Prize-winner Mark Schoofs, while Mashable employs a news staff of 70, including former New York Times assistant managing editor Jim Roberts.[125] Audience figures for commercial digital-only sites—such as the Huffington Post—compete with the digital audience figures of much larger legacy news organizations.[126] For three months in 2013, the Huffington Post averaged 45 million unique monthly visitors and Buzzfeed averaged 17 million unique monthly visitors; by comparison, the Washington Post averaged 19 million unique monthly visitors during that time.[127] The audience for non-commercial digital-only sites—such as ProPublica—is also growing rapidly.[128]

It is not just the Internet, however, that has changed the media environment. How people use the media has also changed dramatically since the NBCO rule was implemented in 1975. At that time, nightly television news dominated, and most people read a newspaper on a daily basis. But today, audiences are fragmenting as consumers move towards new digital media. Traditional radio has been greatly affected by the advent of subscription services. Sirius XM satellite radio subscriber numbers have steadily grown since 2009, and in 2013, reached 25.6

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[124] Pew Research Journalism Project, *State of the News Media 2014* (Mar. 26, 2014), *available at* http://www.journalism.org/2014/03/26/state-of-the-news-media-2014-overview/ (lasted visited June 11, 2014).

[125] *Id.* The percentage of Americans who access news *video* online also continues to increase. Viewing of news video on the web trended upwards in 2013, with 36% of Americans watching news video online. *See* Pew Research Journalism Project, *News Video on the Web: A Growing, if Uncertain, Part of the News* (Mar. 26, 2014), *available at* http://www.journalism.org/2014/03/26/news-video-on-the-web/ (lasted visited June 11, 2014).

[126] *2014 Pew Study* at 6.

[127] *Id.*

[128] *Id.* at 6–7. For example, visitors to ProPublica, a national level news organization, grew 176% from 2010 to 2012; visitors to the New England Center for Investigative Reporting, a regional level news organization, grew 87% from 2010 to 2012; and visitors to MinnPost, a local level news organization, grew 375% from 2010 to 2012. *Id.*

million.[129] As discussed above, newspapers are losing readers to online options.[130] And in the television context, there has been a shift from "a world dominated by broadcast content to an increasingly fragmented one where the American viewer now consumes the majority of TV content from dual stream advertiser and subscription fee supported cable channels."[131]

These numbers tell us at least one thing: the current media landscape is undeniably diverse. The Commission states that its viewpoint diversity analysis focuses on "the *availability* of media content reflecting a variety of perspectives."[132] However, in looking at the availability of competing and alternative sources, the Commission generally has attempted to weight each source according to a one-dimensional quantification of the relative importance or frequency of use of each type of media. This approach results in an unduly limited and over-simplified picture of the marketplace and the way in which news is generated and consumed in the digital age.

A recent study by the Media Insight Project finds that "some long-held beliefs about people relying on just a few primary sources for news are now obsolete."[133] It goes on to show

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[129] Pew Research Journalism Project, *Sirius XM Subscribers*, *available at* http://www.journalism.org/media-indicators/sirius-xm-subscribers/ (lasted visited June 11, 2014).

[130] *See supra* Section II.A.3.

[131] *Bank Testimony* at 2. Today, broadcast only garners one third of the primetime audience. *Id.* at 3. Pew reports that despite an increase in audiences for local television news in 2013, the overall trend is still negative: since 2007, audiences for morning newscasts have fallen 3%, audiences for early evening newscasts have fallen 12%, and audiences for late night newscasts have fallen 17%. Pew Research Center, *Local TV Audiences Bounce Back* (Jan. 28, 2014), *available at* http://www.pewresearch.org/fact-tank/2014/01/28/local-tv-audiences-bounce-back/ (last visited June 11, 2014).

[132] *2014 FNPRM*, 29 FCC Rcd. at 4418 (n.295) (emphasis added).

[133] The Media Insight Project, *The Personal News Cycle*, 1 (Mar. 2014), *available at* http://www.americanpressinstitute.org/publications/reports/survey-research/personal-news-cycle/.

that across generations, the majority of Americans get their news each week from a combination of sources and technologies, including television (87%), laptop or computer (69%), radio (over 60%), newspaper or magazine (61%), cell phone (56%), and tablet (29%).[134] On average, Americans use four devices or technologies per week to follow the news.[135] Finally, the study shows that only 24% of Americans prefer to get their news from television, while 45% of Americans do not have a preference, indicating that Americans typically choose to get news from a variety of sources.[136]

Today's competitive and diverse media marketplace offers consumers a plethora of sources for local information and for varying viewpoints. As described above, in the digital age, consumers have more choices than ever regarding how and when to get their news. And they take advantage of those choices, accessing a large number of sources to obtain information when and where, and from whatever sources, they want it. Once a news item enters the Internet ecosystem, there are countless opportunities for competing media outlets and consumers alike to comment and expand upon it, thereby ensuring that no viewpoint is left unheard. The NBCO rule is no longer needed—if it ever was—to protect or promote viewpoint diversity; that diversity already exists separate and apart from any rule or government mandate. Viewpoint diversity should not be measured only by how much weight a certain medium carries but, rather, by the availability of an ever-expanding variety of sources of news and information used by consumers in an ever-changing and near limitless mix. In 2014, that availability abounds, and therefore, so does viewpoint diversity. When judged against a paradigm that considers not just the relative quantitative importance of news sources but—as the digital revolution and the media

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[134] *Id.* at 1–2, 6–7.

[135] *Id.* at 6.

[136] *Id.* at 7.

consumption habits of Americans demand—the availability of different sources when and where and in whatever combination or sequence consumers wish to access them, the conclusion is inescapable that the Commission should jettison the NBCO rule and, in particular, its newspaper/radio component.

IV. THE BAN ON NEWSPAPER/BROADCAST CROSS-OWNERSHIP UNFAIRLY DISCRIMINATES AGAINST PROSPECTIVE CO-OWNERS OF NEWSPAPER AND BROADCAST PROPERTIES.

The current regulatory scheme also unfairly discriminates against broadcast licensees with newspaper holdings, as compared to their broadcast-only competitors. Under the current rules, broadcast-only owners can realize the operational and economic benefits of common ownership. But prospective co-owners of newspaper and broadcast properties are held to more stringent standards. This disparate treatment has no public interest rationale, and the competitive disadvantage that the NBCO rule arbitrarily imposes provides yet another reason for its elimination.

Currently, broadcast-only operators can take advantage of significant operational and economic benefits of common ownership. Under the current radio/television cross-ownership rule, a single entity can own up to two television stations and six radio stations in a market if there are at least twenty independently owned media voices in that market.[137] Even in markets with fewer media voices, broadcast-only operators can own multiple properties in a single market: up to two television stations and four radio stations in a market if there are at least ten independently owned media voices, and one radio station and two television stations regardless of the number of media voices in the market.[138] Moreover, the Commission proposes in the *2014 NPRM* to *eliminate* the radio/television cross-ownership rule for much the same reason that it is

[137] 47 C.F.R. § 73.3555(c); *see also 2014 FNPRM*, 29 FCC Rcd. at 4460–61 (n.596).

[138] 47 C.F.R. § 73.3555(c); *see also 2014 FNPRM*, 29 FCC Rcd. at 4460–61 (n.596).

considering eliminating the newspaper/radio cross-ownership rule: because there is no viewpoint diversity rationale to support it.[139] If the Commission ultimately adopts this proposal, there would clearly be no rational basis for continuing to restrict newspaper/radio cross-ownership.

Similarly, the current local television and local radio ownership rules—both of which the Commission proposes to maintain—allow significant common ownership for broadcast-only operators.[140] Under those rules, in the same market, a television operator would be able to own up to two television stations (subject to the top-four prohibition, the eight-voices test, and the condition that the digital noise limited service contours of the stations do not overlap).[141] A radio operator can own between five and eight radio stations (subject to the AM/FM subcaps).[142] Other media—including satellite and Internet radio, cable television, and new digital platforms—are subject to no local ownership restrictions at all. In stark contrast, the existing NBCO rule imposes an absolute ban on common ownership of one newspaper and even a single broadcast station.

This regulatory disparity is not based on the public interest. In fact, public interest concerns and administrative law principles compel the Commission to treat prospective newspaper/broadcast co-owners and broadcast-only co-owners consistently—allowing both to take advantage of the benefits of common ownership. The disparate treatment of newspaper owners is especially troubling, as newspapers are far more likely than other types of media entities to help broadcast stations promote the Commission's localism goal. Daily newspapers

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[139] *2014 FNPRM*, 29 FCC Rcd. at 4465 (¶ 210).

[140] *Id.* at 7, 32 (¶¶ 15, 74). The Commission proposes a limited modification to the local television rule, and no modifications to the local radio rule.

[141] *Id.* at 8 (¶ 16).

[142] *Id.* at 32 (¶ 75).

continue to have more newsgathering resources than other local entities, and daily newspapers also have a strong journalistic tradition woven into their day-to-day operations. Coupled with the business incentive for newspapers to use these resources and traditions to increase the local news and information offerings at other commonly owned outlets, it is clear that common ownership of newspapers and broadcast entities would advance rather than harm the localism goal. The Commission should end this inequitable treatment and allow entities to commonly own newspaper and broadcast properties, or at an absolute minimum, lift the newspaper/radio restriction.

V. ELIMINATING THE NBCO RULE WILL NOT NEGATIVELY IMPACT MINORITY OR FEMALE OWNERSHIP DIVERSITY.

As Morris demonstrated last year in response to the Commission's notice seeking comment on the *Minority Media and Telecommunications Council ("MMTC") Study*,[143] cross-ownership of daily newspapers and broadcast stations does not have a material adverse effect on minority or female ownership in the broadcast space. The *MMTC Study* shows that regardless of race or gender, broadcast competitors—both new entrants and existing competitors—face the same "general business concerns that all radio and television stations have in all markets" and are not impacted by the existence of newspaper/broadcast combinations.[144] Morris agrees with the Commission's tentative conclusion that the record does not establish that modification or elimination of the NBCO rule would harm minority and female broadcast ownership.[145]

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[143] *Morris MMTC Comments* at 4–7.

[144] *The Impact of Cross Media Ownership on Minority/Women Owned Broadcast Stations*, Mark R. Fratrik, Ph.D., Vice President/Chief Economist, BIA/Kelsey 4 (May 30, 2013), attached to *Ex Parte* Letter from David Honig, MMTC, to Marlene H. Dortch, MB Docket Nos. 09-182, 07-294 (May 30, 2013).

[145] *2014 FNPRM*, 29 FCC Rcd. at 4421, 4454–60 (¶¶ 120, 189-199).

Indeed, as the Commission notes, no commenter in the 2010 Quadrennial Review focused specifically on the impact of newspaper/radio cross-ownership rule on minority and female ownership, and none "seriously contended or provided any data showing that newspaper mergers with minority/female-owned radio stations would harm viewpoint diversity in local markets."[146] As noted above, the Commission concludes that radio stations as a whole do not "contribute significantly to viewpoint diversity," and recognizes, further, the lack of any "evidence in the current record suggesting that minority/female-owned radio stations contribute more significantly to viewpoint diversity or broadcast greater amounts of local news on which consumers rely as a primary source of information than other radio stations."[147] Moreover, the Commission rightly states that even if there were such evidence, it would not be reasonable to restrain the ability of all owners of commercial radio stations and newspapers to combine based on concerns about ownership diversity.[148]

Morris recognizes and shares the Commission's concern with finding a solution to the real problem of disproportionately low female and minority broadcast ownership. However, there is no credible evidence that retaining the nearly forty-year-old NBCO rule in any way helps to solve this problem.[149] Rather, increased flexibility for broadcast owners would benefit all owners, including women and minority owners. Instead of delaying the cross-ownership regulatory review—that has now lasted for over a decade—any further, the Commission should seek targeted solutions that directly address the disparities in ownership for women and

[146] *Id.* at 85 (¶ 191).

[147] *Id.*

[148] *Id.*

[149] *See Hundt Op-Ed* ("It is important that minority views—whether a minority is defined by race, religion, wealth, income, politics, education, disability, gender, sexual orientation or any other distinction—have the chance to be heard. But there's no way for the FCC to accomplish this laudable goal by controlling who can own a newspaper.").

minorities while eliminating outdated restrictions that artificially limit the flexibility of all owners to adapt to the evolving media marketplace.[150]

VI. CONCLUSION

For the reasons set forth above, Morris respectfully requests that the Commission eliminate the NBCO rule in its entirety, or at the very least, eliminate the newspaper/radio cross-ownership restriction. Doing so will promote, not harm, the public interest, and is required under Section 202(h) and the APA.

Respectfully submitted,

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[150] *See Morris Ownership Report Reply Comments* at 5–6 (filed Jan. 4, 2013) (listing six proposals that the Commission should consider to enhance the ability of minorities and women to expand their presence in the broadcast industry).